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8 **BEFORE THE**
9 **BOARD OF BEHAVIORAL SCIENCES**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2002021000965

13 **ROBERTO HERNANDEZ, JR.**
14 **1231 Greenleaf Loop**
Greenfield, CA 93927

DEFAULT DECISION AND ORDER

15 **Associate Marriage and Family Therapist**
16 **Registration No. AMFT 105958**
17 **Associate Professional Clinical Counselor**
18 **Registration No. APCC 5021**

[Gov. Code, §11520]

19
20 Respondent.

21 **FINDINGS OF FACT**

22 1. On or about August 10, 2022, Complainant Steve Sodergren, in his official capacity
23 as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs,
24 filed Accusation No. 2002021000965 against Roberto Hernandez, Jr. (Respondent) before the
25 Board of Behavioral Sciences. (Accusation attached as Exhibit A.)

26 2. On or about April 18, 2018, the Board of Behavioral Sciences (Board) issued
27 Associate Marriage and Family Therapist Registration No. AMFT 105958 to Respondent. The
28

1 Associate Marriage and Family Therapist Registration expired on April 30, 2022, and has not
2 been renewed.

3 3. On or about April 23, 2018, the Board of Behavioral Sciences issued Associate
4 Professional Clinical Counselor Registration No. APCC 5021 to Respondent. The Associate
5 Professional Clinical Counselor Registration expired on April 30, 2019, and has not been
6 renewed.

7 4. On or about September 1, 2022, Respondent was served by Certified and First Class
8 Mail copies of the Accusation No. 2002021000965, Statement to Respondent, Notice of Defense,
9 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
10 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
11 Code section 136, is required to be reported and maintained with the Board. Respondent's
12 address of record was and is:

13 1231 Greenleaf Loop
14 Greenfield, CA 93927.

15 5. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505(c) and/or Business and Professions Code section 124.

17 6. Government Code section 11506(c) states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense . . . and the notice shall be deemed a specific denial of all
20 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
21 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
22 discretion may nevertheless grant a hearing.

23 7. The Board takes official notice of its records and the fact that Respondent failed to
24 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
25 waived his right to a hearing on the merits of Accusation No. 2002021000965.

26 8. California Government Code section 11520(a) states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense . . . or to appear at
28 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
4 finds that the charges and allegations in Accusation No. 2002021000965, are separately and
5 severally, found to be true and correct by clear and convincing evidence.

6 10. The Board finds that the actual costs for Investigation and Enforcement are \$5,709.00
7 as of October 10, 2022.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Roberto Hernandez, Jr. has
10 subjected his Associate Marriage and Family Therapist Registration No. AMFT 105958 to
11 discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The Board of Behavioral Sciences is authorized to revoke Respondent's Associate
14 Marriage and Family Therapist Registration and Associate Professional Clinical Counselor
15 Registration based upon the following violations alleged in the Accusation which are supported
16 by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

17 (a) Gross Negligence or Incompetence: Bus. & Prof. Code, §§ 4982(d) and 4999.90(d),
18 Code of Regulations, title 16, § 1812;

19 (b) Intentionally or Recklessly Causing Physical or Emotional Harm: Bus. & Prof. Code,
20 §§ 4982(i) and 4999.90(i), Code of Regulations, title 16, § 1812;

21 (c) Engaging in Sexual Relations with Client: Bus. & Prof. Code, §§ 4982(k) and
22 4999.90(k), Code of Regulations, title 16, § 1812;

23 (d) Failure to Cooperate in Board Investigation: Code of Regulations, title 16, §§
24 1823(d), 1845(d).

25 **ORDER**

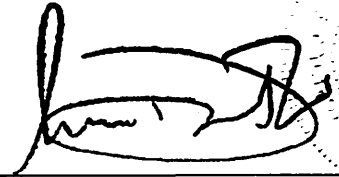
26 IT IS SO ORDERED that Associate Marriage and Family Therapist Registration No.
27 AMFT 105958, issued to Respondent Roberto Hernandez, Jr., and Professional Clinical
28

1 Counselor Registration No. APCC 5021, issued to Respondent Roberto Hernandez, Jr., are
2 revoked.

3 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
4 written motion requesting that the Decision be vacated and stating the grounds relied on within
5 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
6 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

7 This Decision shall become effective on January 5, 2023.

8 It is so ORDERED December 6, 2022



FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

13 43428706.DOCX
DOJ Matter ID:SF2022400861

14 Attachment:
15 Exhibit A: Accusation

Exhibit A

Accusation

(ROBERTO HERNANDEZ, JR.)

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8 **BEFORE THE**
9 **BOARD OF BEHAVIORAL SCIENCES**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2002021000965

13 **ROBERTO HERNANDEZ, JR.**
1231 Greenleaf Loop
14 Greenfield, CA 93927

ACCUSATION

15 **Associate Marriage and Family Therapist**
Registration No. AMFT 105958
16 **Associate Professional Clinical Counselor**
Registration No. APCC 5021

17 Respondent.
18

19
20 **PARTIES**

21 1. Steve Sodergren (Complainant) brings this Accusation solely in his official capacity
22 as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.

23 2. On or about April 18, 2018, the Board of Behavioral Sciences issued Associate
24 Marriage and Family Therapist Registration Number AMFT 105958 to Roberto Hernandez, Jr.
25 (Respondent). The Associate Marriage and Family Therapist Registration expired on April 30,
26 2022, and has not been renewed.

27 3. On or about April 23, 2018, the Board of Behavioral Sciences issued Associate
28 Professional Clinical Counselor Registration Number APCC 5021 to Roberto Hernandez, Jr.

(Respondent). The Associate Professional Clinical Counselor Registration expired on April 30, 2019, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Board of Behavioral Sciences (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4990.33 states:

Notwithstanding any other law, except as provided in Section 4990.32, the expiration, cancellation, forfeiture, or suspension of a license, registration, or other authority to practice by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license or registration by a licensee or registrant, of any license or registration within the authority of the board, shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or registrant or to render a decision suspending or revoking the license or registration.

STATUTORY PROVISIONS

7. Section 4982 states, in pertinent part:

The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if the licensee or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

...

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

...

(i) Intentionally or recklessly causing physical or emotional harm to any client.

...

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing

1 an act punishable as a sexually related crime, if that act or solicitation is substantially
2 related to the qualifications, functions, or duties of a marriage and family therapist.

3 ...

4 8. Section 4999.90 states, in pertinent part:

5 The board may refuse to issue any registration or license, or may suspend or
6 revoke the registration or license of any associate or licensed professional clinical
7 counselor, if the applicant, licensee, or registrant has been guilty of unprofessional
8 conduct. Unprofessional conduct includes, but is not limited to, the following:

9 ...

10 (d) Gross negligence or incompetence in the performance of licensed
11 professional clinical counseling services.

12 ...

13 (i) Intentionally or recklessly causing physical or emotional harm to any client.

14 ...

15 (k) Engaging in sexual relations with a client, or a former client within two
16 years following termination of therapy, soliciting sexual relations with a client, or
17 committing an act of sexual abuse, or sexual misconduct with a client, or committing
18 an act punishable as a sexually related crime, if that act or solicitation is substantially
19 related to the qualifications, functions, or duties of a licensed professional clinical
20 counselor.

21 ...

22 REGULATORY PROVISIONS

23 9. California Code of Regulations, title 16, section 1812 states:

24 (a) For purposes of denial, suspension, or revocation of a license pursuant to
25 Section 141, Division 1.5 (commencing with Section 475), or Section 4982, Section
26 4989.54, Section 4992.3, or Section 4999.90 of the Code, a crime, professional
27 misconduct, or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a person holding a license under Chapters 13, 13.5, 14, and 16
of Division 2 of the Code if to a substantial degree it evidences present or potential
unfitness of a person holding a license to perform the functions authorized by the
license in a manner consistent with the public health, safety or welfare. For purposes
of this section, "license" shall mean license or registration.

(b) In making the substantial relationship determination required under
subsection (a) for a crime, the board shall consider all of the following criteria:

(1) The nature and gravity of the offense.

(2) The number of years that have elapsed since the date of the offense.

(3) The nature and duties of a marriage and family therapist, educational
psychologist, clinical social worker, or professional clinical counselor.

1 (c) For purposes of subsection (a), a substantially related crime, professional
misconduct, or act shall include, but is not limited to, the following:

2 ...

3 (2) Any violation of the provisions of Chapter 13 (commencing with section
4 4980), Chapter 13.5 (commencing with section 4989.10), Chapter 13.7 (commencing
5 with section 4990), Chapter 14 (commencing with section 4991), or Chapter 16
6 (commencing with section 4999.10) of Division 2 of the Code.

7 10. California Code of Regulations, title 16, section 1823 states, in pertinent
part:

8 As used in Section 4999.90 of the code, unprofessional conduct includes, but is
9 not limited to:

10 (a) Failure to provide to the board, as authorized by law, copies of records within 15
11 days of receipt of the request or within the time specified in the request, whichever is
12 later, unless the licensee or registrant is unable to provide the records within this time
13 period for good cause. Good cause includes, but is not limited to, physical inability to
access the records in the time allowed due to illness or travel, or inability to obtain the
necessary patient release authorization, if applicable. This subsection shall not apply
to a licensee or registrant who does not have access to, and control over, medical
records.

14 (b) Failure to cooperate and participate in any board investigation pending against the
15 licensee or registrant. This subsection shall not be construed to deprive a licensee,
16 registrant, or a consumer of any rights or privilege guaranteed by the Fifth
17 Amendment to the Constitution of the United States, or any other constitutional or
18 statutory rights or privileges. This subsection shall not be construed to require a
19 licensee or registrant to cooperate with a request that would require the licensee,
20 registrant, or a consumer to waive any constitutional or statutory rights or privilege or
21 to comply with a request for information or other matters within an unreasonable
22 period of time in light of the time constraints of the licensee's or registrant's practice.
Any exercise by a licensee or registrant of any constitutional or statutory rights or
privilege shall not be used against the licensee or registrant in a regulatory or
disciplinary proceeding against the licensee or registrant.

23 ...

24 11. California Code of Regulations, title 16, section 1845 states, in pertinent part:

25 As used in section 4982 of the code, unprofessional conduct includes, but is not
26 limited to:

27 ...

28 (e) Failure to provide to the board, as authorized by law, copies of records
within 15 days of receipt of the request or within the time specified in the request,
whichever is later, unless the licensee or registrant is unable to provide the records
within this time period for good cause.

1 Good cause includes, but is not limited to, physical inability to access the
2 records in the time allowed due to illness or travel, or inability to obtain the necessary
3 patient release authorization, if applicable. This subsection shall not apply to a
4 licensee or registrant who does not have access to, and control over, medical records.

5 (f) Failure to cooperate and participate in any board investigation pending
6 against the licensee or registrant. This subsection shall not be construed to deprive a
7 licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth
8 Amendment to the Constitution of the United States, or any other constitutional or
9 statutory rights or privileges. This subsection shall not be construed to require a
10 licensee or registrant to cooperate with a request that would require the licensee,
11 registrant, or a consumer to waive any constitutional or statutory rights or privilege or
12 to comply with a request for information or other matters within an unreasonable
13 period of time in light of the time constraints of the licensee's or registrant's practice.
14 Any exercise by a licensee or registrant of any constitutional or statutory rights or
15 privilege shall not be used against the licensee or registrant in a regulatory or
16 disciplinary proceeding against the licensee or registrant.

17 ...

18 COST RECOVERY

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 FACTUAL ALLEGATIONS

26 13. From on or about September 27, 2019, through on or about January 14, 2020,
27 Respondent provided individual therapy sessions to E.R. Following the termination of
28 professional therapy services, from May through September, 2020, Respondent contacted E.R. by
text from his personal cell phone, including sending sexual images and messages, and asking E.R.
out on dates. Respondent initiated sexual contact with E.R. in May, June, and July of 2020. In
October 2020, E.R. submitted a complaint to the Board alleging the infliction of emotional harm
and sexual misconduct.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence or Incompetence-Associate Marriage and Family Therapist)

3 14. Respondent's Associate Marriage and Family Therapist Registration is subject to
4 disciplinary action under Code section 4982, subdivision (d), and/or California Code of
5 Regulations, Title 16, section 1812, in that Respondent engaged in gross negligence or
6 incompetence in the performance of marriage and family therapy when he engaged in a sexual
7 relationship and/or solicited sexual relations with a former client within two years of termination
8 of professional services, as described above in paragraph 13 and incorporated herein by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Gross Negligence or Incompetence-Associate Professional Clinical Counselor)

11 15. Respondent's Associate Professional Clinical Counselor Registration is subject to
12 disciplinary action under Code section 4999.90, subdivision (d), and/or California Code of
13 Regulations, Title 16, section 1812, in that Respondent engaged in gross negligence or
14 incompetence in the performance of professional clinical counseling when he engaged in a sexual
15 relationship and/or solicited sexual relations with a former client within two years of termination
16 of professional services, as described above in paragraph 13 and incorporated herein by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Intentionally or Recklessly Causing Physical or Emotional Harm- Associate Marriage and
19 Family Therapist)

20 16. Respondent's Associate Marriage and Family Therapist Registration is subject to
21 disciplinary action under Code section 4982, subdivision (d), and/or California Code of
22 Regulations, Title 16, section 1812, in that Respondent intentionally or recklessly caused
23 emotional harm to a client, as described above in paragraph 13 and incorporated herein by
24 reference.

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26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Intentionally or Recklessly Causing Physical or Emotional Harm-Associate Professional Clinical
3 Counselor)

4 17. Respondent's Associate Professional Clinical Counselor Registration is subject to
5 disciplinary action under Code section 4999.90, subdivision (d), and/or California Code of
6 Regulations, Title 16, section 1812, in that Respondent intentionally or recklessly caused
7 emotional harm to a client, as described above in paragraph 13 and incorporated herein by
8 reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Engaging in Sexual Relations with Client-Associate Marriage and Family Therapist)

11 18. Respondent's Associate Marriage and Family Therapist Registration is subject to
12 disciplinary action under Code section 4982, subdivision (d), and/or California Code of
13 Regulations, Title 16, section 1812, in that Respondent engaged in a sexual relationship and/or
14 solicited sexual relations with a former client within two years of termination of professional
15 services, as described above in paragraph 13 and incorporated herein by reference.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Engaging in Sexual Relations with Client-Associate Professional Clinical Counselor)

18 19. Respondent's Associate Professional Clinical Counselor Registration is subject to
19 disciplinary action under Code section 4999.90, subdivision (d), and/or California Code of
20 Regulations, Title 16, section 1812, in that Respondent engaged in a sexual relationship and/or
21 solicited sexual relations with a former client within two years of termination of professional
22 services, as described above in paragraph 13 and incorporated herein by reference.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 (Failure to Cooperate in Board Investigation-Associate Marriage and Family Therapist)

25 20. Respondent's Associate Marriage and Family Therapist Registration is subject to
26 disciplinary action under Code section 4982, subdivision (d), and/or California Code of
27 Regulations, Title 16, section 1823(d), in that Respondent failed to cooperate and participate in
28

1 the board investigation concerning the complaint described above in paragraph 13, and
2 incorporated herein by reference.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 (Failure to Cooperate in Board Investigation-Associate Professional Clinical Counselor)

5 21. Respondent's Associate Professional Clinical Counselor Registration is subject to
6 disciplinary action under Code section 4999.90, subdivision (d), and/or California Code of
7 Regulations, Title 16, section 1845(d), in that Respondent failed to cooperate and participate in
8 the board investigation concerning the complaint described above in paragraph 13, and
9 incorporated herein by reference.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Behavioral Sciences issue a decision:

- 13 1. Revoking or suspending Associate Marriage and Family Therapist Registration
14 Number AMFT 105958, issued to Respondent Roberto Hernandez, Jr.;
- 15 2. Revoking or suspending Associate Professional Clinical Counselor Registration
16 Number APCC 5021, issued to Respondent Roberto Hernandez, Jr.;
- 17 3. Ordering Respondent Roberto Hernandez, Jr. to pay the Board of Behavioral Sciences
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3; and,
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: August 10, 2022

Steve Sodergren

STEVE SODERGREN
Executive Officer
Board of Behavioral Sciences
Department of Consumer Affairs
State of California
Complainant

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